

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In the Matter of Application Serial No. 78/296,551
Published in the Official Gazette of June 8, 2004
Atty. Ref.: 0820312.0907*

AstraZeneca AB,

Opposer,

-against-

Roxane Laboratories, Inc.,

Applicant.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Attn: BOX TTAB FEE

Opposition No.:

"EXPRESS MAIL" Label No.: EV477960124US

I hereby certify that this paper or fee is being deposited with the United Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 2.198 on the date indicated below and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-145

Signature

JULIO SIMMONS

Printed Name

December 6, 2004

Date

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NOTICE OF OPPOSITION

AstraZeneca AB, a Swedish corporation, with a place of business located at Västra Mälarehamnen 9, SE-151 85 Södertälje, Sweden [hereinafter "Opposer"], believes that it will be damaged by registration of the trademark "EXTAIN", as shown in Application Serial No. 78/296,551, filed September 5, 2003, and hereby opposes same.

As grounds for opposition, it is alleged that:

1. Applicant has filed an application in the United States Patent and Trademark Office, Serial No. 78/296,551, filed September 5, 2003, for registration of the trademark



“**EXTAIN**” on the Principal Register in respect of “pharmaceuticals namely sustained-release formulations of oxycodone hydrochloride for pain relief” (Int’l. Class 5), alleging a bona fide intention to use said mark in commerce.

2. Opposer is a leading producer and distributor of high-quality pharmaceutical products.

3. Opposer has registered the trademark “**EXANTA**” on the Principal Register of the United States Patent and Trademark Office, Reg. No. 2,440,578, dated April 3, 2001, in respect of “pharmaceutical preparations for the treatment of cardiovascular diseases” (Int’l. Cl. 5). Said registration is valid and subsisting, and Opposer hereby gives notice, in accordance with Trademark Rule 2.122(d)(2), that it will rely on said registration as evidence on its behalf in this proceeding, and that a status copy thereof showing present title will be introduced into evidence during Opposer’s testimony period.

4. Opposer has applied to register “**EXANTIN**” as a trademark for “pharmaceutical preparations for the treatment of cardiovascular diseases” (Int’l. Class 5), Appl. Ser. No. 78/146,914 filed July 24, 2002.

5. Opposer has applied to register “**EXANTINE**” as a trademark for “pharmaceutical preparations for the treatment of cardiovascular diseases and disorders” (Int’l. Class 5), Appl. Ser. No. 78/276,882, filed July 21, 2003.

6. Opposer has applied to register “**EXARTIN**” as a trademark for “pharmaceutical preparations for the treatment of cardiovascular diseases” (Int’l. Class 5), Appl. Ser. No. 78/147,185, filed July 24, 2002.

7. There is no issue of priority since the filing date of Applicant's "EXTAIN" trademark application is subsequent to the filing and/or registration dates for Opposer's aforementioned trademarks.

8. Opposer's aforementioned trademarks possesses a high degree of inherent distinctiveness and represent or will represent extremely valuable assets and symbols of the goodwill of its business by identifying goods which have their source of origin exclusively with Opposer, and by distinguishing such goods from those of others.

9. Applicant's alleged trademark "EXTAIN" is confusingly similar to Opposer's aforementioned trademarks in sound, appearance and/or commercial impression.

10. The respective goods of the Opposer and the Applicant are closely related and/or complementary, would travel through the same channels of trade for sale to or use by the same general class of purchasers, and would be dispensed by the same types of medical personnel.

11. Under the "doctrine of greater care", Applicant has a duty to adopt a trademark for its aforementioned pharmaceutical preparations which is clearly distinguishable from Opposer's aforementioned trademarks for pharmaceutical preparations.

12. Under the "doctrine of greater care", Applicant's alleged trademark "EXTAIN" is likely to cause confusion, and/or to cause mistake, and/or to deceive with respect to Opposer's aforementioned trademarks, with potentially harmful consequences to users of Applicant's and/or Opposer's products.

13. Applicant's alleged trademark is calculated or likely to cause pre-purchase and/or post-purchase confusion, mistake or deception of purchasers or members of the public as to the respective marks of the Opposer and the Applicant, and also as to the source of origin or sponsorship of the goods for which such marks are used.

14. Applicant's alleged trademark is calculated or likely to cause irreparable loss, injury and/or damage to Opposer's business and to the goodwill thereto appertaining as symbolized and recognized by its aforementioned trademarks.

15. Applicant's alleged trademark is a colorable imitation or misappropriation of Opposer's pleaded trademarks, and will enable Applicant to reap where it has not sown by trading on the goodwill of Opposer's business as symbolized and recognized by its aforementioned trademarks.

16. Applicant's alleged trademark consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

IN CONCLUSION, Opposer, by its undersigned attorneys, prays that its opposition to Application Serial No. 78/296,551 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Opposer that the Board finds to be necessary and just in the circumstances.


A check for \$300 in payment of the official filing fee is enclosed herewith. The Commissioner is authorized to charge our Deposit Account No. 08-0570, for any other fees required to be paid in connection with this proceeding.

Respectfully submitted,

AstraZeneca AB

Dated: December 6, 2004

By



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